Fiman Plastics Industries Sdn Bhd v Zaitun Industries Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D4-22-220 OF 1989 AND CIVIL APPEAL NO W-02-620 OF 2001

YAACOB ISMAIL J

3 JUNE 2003

Sale of Goods *— Merchantable quality — Fitness for purpose — Purpose for which goods were required implied — Negotiations reveal purpose of goods — Reliance on seller's skill and judgment to supply suitable goods to cater for particular purpose for which goods were required — Goods sold under trade name, whether exclude implied condition — Failure to put forth tangible evidence to support claim — Whether court could award damages — Sale of Goods Act 1957 s 16(1)(a)*

The plaintiff was the sole supplier and manufacturer of plastic bottles used by the defendant in packaging their products which included baby syampoo bottles. There were latent defects on the bottles when shampoo was filled into the bottles and buyers had complained verbally of the leakage to SD5, the salesman of the plaintiff. The bottles were also found to be defective with cracks appearing at the neck. These latent defects were not discovered at the time of receipt of the goods. The defendant made demands to the plaintiff to credit the sum of RM150,681.02 to the defendant's account as the plaintiff had failed to rectify the defects. The issue to be determined was whether, on a sale of goods by virtue of s 16(1)(a) of the Sale of Goods Act 1957, the defendant had made known to the plaintiff the purpose for which the bottles were required so as to show that he relied on the seller's skill or judgment was one of fact depending on the circumstances of the particular case.

Held, estopping the plaintiff from denying that the bottles were defective and allowing the defendant's counterclaim to an extent of RM30,784.64 for special damages:

Looking at the representation by SD5, who was the plaintiff's salesman, the plaintiff was estopped from denying that the bottles were defective. On the facts, SD5 had admitted that the bottles supplied to the defendant suffered from many defects including breakage and leaking. The defendant had counterclaimed amongst other things, for loss of profits for baby shampoo in the sum of RM119.897.02. This was based on 79,402 bottles @ RM1.51 normal profit margin of 55% for shampoo products. No tangible evidence was put forth to support this claim. It was therefore disallowed. For similar reason, the defendant's claim for RM1m as damages sustained to their goodwill and reputation was also disallowed as loss of reputation had not been proved and also remote (see p 262B–D).

[Bahasa Malaysia summary

Plaintif adalah satu-satunya pembekal dan pengeluar botol-botol plastik yang digunakan oleh defendan untuk membungkus produk-produk mereka termasuklah botol-botol syampu bayi. Terdapat kecacatan yang terpendam pada botol-botol tersebut apabila syampu didikan ke dalam botol-botol tersebut dan pembeli-pembeli telah mengadu secara lisan tentang kebocoran tersebut kepada SD5, jurujual plaintif. Botol-botol tersebut juga didapati defektif dengan retakan yang kelihatan di bahagian leher botol. Kecacatan-kecacatan yang terpendam tersebut tidak dikesan semasa menerima barangan tersebut. Defendan telah membuat tuntutan kepada plaintif untuk mengkreditkan sejumlah RM150,681.02 ke dalam akaun defendan kerana plaintif telah gagal untuk membaiki kecacatan-kecacatan tersebut. Persoalan yang perlu ditentukan adalah sama ada, berdasarkan jualan barangan menurut s 16(1)(a) Akta Jualan Barangan 1957, defendan telah memaklumkan kepada plaintif tujuan yang mana botol-botol tersebut diperlukan untuk menunjukkan bahawa beliau bergantung kepada kepakaran atau pertimbangan penjual adalah berdasarkan fakta yang bergantung kepada keadaan-keadaan kes tertentu.

Diputuskan, mengestopkan plaintif dari menafikan bahawa botol-botol tersebut adalah defektif dan membenarkan tuntutan balas defendan setakat RM30,784.64 untuk ganti rugi khas:

Melihat representasi oleh SD5, yang merupakan jurujual plaintif, plaintif diestopkan dari menafikan bahawa botol-botol tersebut adalah defektif. Berdasarkan fakta-fakta, SD5 telah mengakui bahawa botol-botol yang dibekalkan kepada defendan mengalami banyak kecacatan termasuklah keretakan dan kebocoran. Defendan telah membuat tuntutan balas natara lain, untuk kerugian keuntungan syampu bayi berjumlah RM119.897.02. Ini berdasarkan 79,402 botol-botol @ RM1.51 pada paras keuntungan biasa 55% untuk produk syampu. Tiada keterangan kukuh dikemukakan untuk menyokong tuntutan ini. Oleh itu ia tidak dibenarkan. Untuk sebab yang sama, tuntutan defendan untuk RM1m sebagai ganti rugi berkaitan nama baik dan reputasi mereka juga tidak dibenarkan kerana reputasi yang terjejas tidak dibuktikan dan juga tidak diduga (lihat ms 262B–D).]

Notes

For a case on fitness for purposes, see 11 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 760–765.

Cases referred to

Union Alloy (M) Sdn Bhd v Sykt Pembenaan Yeoh Tiong Lay Sdn Bhd [1993] 3 MLJ 167 (refd)

Legislation referred to

Sale of Goods Act 1957 s 16(1)(a)

SK Sivam (*PG Lim & Co*) for the plaintiff.
SL Goh (*Shook lin & Bok*) for the defendant.

Yaacob Ismail J:

Defendant's counterclaim

The defendant's counterclaim is for the payment of the sum of RM150,681.02 being special damages incurred as a result of defective baby shampoo bottles provided by the plaintiff, general damages for loss of reputation, interest thereon at 8%pa from 25 September 1987 to date of full payment and costs.

Facts

The defendant is a company carrying on the business of manufacturing cosmetics, toiletries, pharmaceutical and household products since 1978.

The plaintiff is in the business of manufacturing plastic products, which include plastic bottles and packaging and was from 1983–1988, the sole supplier and manufacturer of bottles used by the defendant in the packaging of their products which included baby lotion bottles, talcum powder bottles and baby powder bottles.

The defendant wanted to purchase bottles as container for baby shampoo. Negotiations took place between the defendant and plaintiff on the said bottle's concept, shape, volume capacity and purpose. The defendant then made orders for the said bottles and the plaintiff delivered the said bottles to the defendant's premises. The said bottles, caps and inserts were delivered separately and the defendant's employees at the production stage would firstly fill the shampoo, then put in the insert and screw on the cap.

When filling of the shampoo into the bottle started, it was found that there were latent defects on the bottle. Subsequently, buyers verbally complained that there was leakage from the neck of the said bottles. As and when defects/problems were discovered, defendant's employee (SD2) would verbally complain to Chern Weai Keat (SD5), the salesman of the plaintiff.

Drop tests were conducted by defendant's employee and it was found that the bottles would break. The bottom of the bottle would fall first but the neck of the bottle would break.

The said bottles were found to be defective with cracks appearing at the neck. These were latent defects which were not immediately discovered at the time of receipt of the goods.

The unused bottles were kept in the defendant's store as directed by SD5. The defendant believed that the plaintiff would rectify the defects.

A Subsequently, the unused 79,402 bottles were destroyed when the defendant shifted its factory to Rawang.

Although the defendant was not satisfied with the said bottles, the cost of the bottles was fully paid to the plaintiff due to the financial practice of the defendant in force then.

B The defendant through the letters of its solicitors dated 26 February 1988 and 25 March 1988, made demands upon the plaintiff to credit the said sum of RM150,681.02 to the defendant's account as the plaintiff had failed to rectify the defects.

Analysis

C

Chern Wai Keat (SD5) was an authorized agent of the plaintiff and expressly authorized to liaise with and make representations to the defendant. In his evidence, SD5 stated that he would supply replacement bottles for the defective bottles. Indulgence of time was given to the plaintiff to do so. The defendant did make attempts to return the goods by asking D SD5 to take back the bottles.

The question whether, on a sale of goods, the defendant made known to the plaintiff the purpose for which the bottles were required so as to show that he relied on the seller's skill or judgment is one of fact depending on the circumstances of the particular case.

E From the facts of this case, the defendant had when purchasing the said bottles, made known, to SD5 that they were meant to contain baby shampoo and that the said bottles should be fit for that purpose.

It was the plaintiff's business to supply and manufacture suitable plastic bottles fit to contain the baby shampoo to be produced by the defendant.

F Section 16(1)(a) of the Sale of Goods Act 1957 ('the Act') states as follows:

> Subject to this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:
>
> G (a) Where the buyer, expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not) there is an implied condition that the goods shall be reasonably fit for such purpose:
>
> H ...
> ...

The four preconditions laid down in s 16(1)(a) of the Act are namely:

(a) the buyer must make known to the seller the particular purpose for which the goods are required;

I (b) it must be shown that there was reliance by the buyer on the seller's skill and judgment, and the buyer must in fact rely on the seller to supply suitable goods;

(c) the goods must be of a description which it is in the course of the seller's business to supply; and

(d) if the goods are specific, they must not be sold under their patent or trade name.

(see *Union Alloy (M) Sdn Bhd v Sykt Pembenaan Yeoh Tiong Lay Sdn Bhd* [1993] 3 MLJ 167).

Looking at the representation by SD5, who is the plaintiff's salesman, the plaintiff is estopped from denying that the bottles were defective. On the facts, SD5 had admitted that the bottles supplied to the defendant suffered from many defects including breakage and leaking.

The defendant has counterclaimed amongst other things, for loss of profits for baby shampoo in the sum of RM119.897.02. This is based on 79,402 bottles @ RM1.51 normal profit margin of 55% for shampoo products. No tangible evidence was put forth to support this claim. It is therefore disallowed. For similar reason, the defendant's claim for RM1m as damages sustained to their goodwill and reputation is also disallowed as loss of reputation had not been proved and also remote.

Conclusion

The counterclaim by the defendant is allowed to this extent:

(i) special damages

Cost of 79,402 bottles which cannot be used by the defendant at 0.32 sen per bottle	:	RM25,408.64
Labels for baby shampoo	:	RM 3,000
Carton boxes for baby shampoo	:	RM 2,376
Total		RM30,784.64;

(ii) interest at 8%pa from 25 September 1987 until full settlement; and

(iii) cost.

Plaintiff's denial that the bottles were defective was estopped and defendant's counterclaim allowed to an extent of RM30,784.64.

Reported by Ezatul Zuria Azhari